

135.0000 BANKS AND INSURANCE COMPANIES—Regulation 1567

135.0005 American Express Company. The American Express Company does not qualify as a bank since it has not been chartered as a banking institution under state or federal law.

The fact that it performs some functions normally performed by banks, and is classified as a “financial institution” for franchise tax purposes, is insufficient to warrant classification of the entity as a bank for sales and use tax purposes. 3/30/78.

135.0010 Attorney-in-Fact of Reciprocal or Interinsurance Exchange. A corporate attorney-in-fact of a reciprocal or interinsurance exchange is exempt from payment of the use tax on property used exclusively in its insurance operations. 1/16/74, 1/30/74.

135.0030 Bank Credit Bids to Acquire Property. A bank holds a perfected security interest in tangible personal property. Rather than repossessing the property, the bank holds an auction and as a creditor bids-in and acquires the property. The sale to the bank as a purchaser (other than a federally chartered bank exempt from direct taxation) is subject to tax unless the bank establishes that the property was purchased for resale. 9/29/88.

135.0065 Checks Sold by a Federal Credit Union. A military federal credit union, with a main office in this state, operates branches throughout the Far East. The branches use an APO San Francisco, 96343 as an address. Any organization/individual using this address is not physically located in California.

It is assumed that the federal credit union is the retailer of the checks. As a matter of state law, the incidence of sales tax is on the retailer. Since a federal credit union is exempt from sales tax, the retail sales of checks in California by the federal credit union are also exempt from sales tax. Since the federal credit union’s sales are exempt from sales tax, use tax applies when the checks are purchased for use in California, and when the use tax applies, the federal credit union is required to collect that use tax from its customers and remit the tax collected to the state. It is presumed that mail addressed to an APO is forwarded outside California. This means that checks mailed to a customer through an APO address are presumed to be purchased for use outside California and not subject to use tax. Records showing names and addresses as they appear on the mailed matter must be kept as evidence of the mailing. 12/18/86; 3/2/88.

135.0080 Collection of Use Tax by Banks. In the following transactions involving the sale of tangible personal property:

1. The borrower sells his equity in property, which has been mortgaged or pledged to the Bank as security for a loan, to a third party who assumes the unpaid balance of the obligation to the Bank.
2. The borrower sells the mortgaged or pledged property to a third party subject to the mortgage or pledge and the Bank releases its claim under the mortgage or pledge upon receipt of payment of the obligation to it.
3. Same as 2 except that the Bank finds the purchaser and the sale from the borrower to the purchaser is handled by a Bank officer.
4. The borrower delivers the mortgaged property to the Bank and consents to its sale. The Bank then sells the property to a third party, applies the proceeds to the debt and delivers the balance, if any, to the borrower.
5. The Bank holds a pledgee sale, after legal notice, and sells the pledged property to a third party at such sale. The proceeds are applied to the debt and the balance, if any, is delivered to the borrower.
6. The mortgaged property is sold to a third party at a sale conducted by a Court officer in a foreclosing proceeding and the proceeds are delivered to the Bank in payment of the debt.
7. The borrower delivers property to the Bank upon which the Bank has no lien and requests the Bank to sell the property for him and apply the proceeds on the debt. The Bank then sells the property to a third party, as agent for the borrower who is the owner of the property and applies the proceeds on the debt.

The Bank is liable for the collection of the use tax from customers in transactions numbered 4, 5, and 7. In each of these transactions the Bank appears to be the seller. In transaction number 6 the sale is by a court officer and in cases 1, 2, and 3, the original owner (borrower) is the seller. He is liable for the tax if he qualifies as a seller or retailer under the terms of the Sales and Use Tax Law. Although in case number 3 the Bank finds the purchaser, it appears that the borrower actually makes the sale in the sense that he has, and exercises, the power by his own act to transfer beneficial title to the purchaser. 2/21/56.

[135.0100](#) **Federal Savings and Loan Associations.** Federal Savings and Loan Associations are not “Banks.” 1/12/50.

[135.0130](#) **Imposition of Sales and Use Taxes on Banks.** Under Statutes 1979, Chapter 1150 (AB 66) sales and use taxes are imposed upon banks with respect to all income years, as defined in Revenue and Taxation Code section 23042, beginning on and after January 1, 1980. Accordingly, if a bank’s income year begins January

1, 1980, it is subject to sales and use taxes January 1, 1980. If its income year begins July 1, 1980, it is subject to sales and use taxes July 1, 1980.

Section 6051 imposes the sales tax upon the gross receipts from the sale of tangible personal property in this state. Commencing with the first day of the bank's fiscal year beginning on and after January 1, 1980, retail sales by banks that are retailers (as defined in sections 6015 and 6019) are subject to the sales tax unless otherwise exempt. For purposes of the sales tax the taxable event is the sale (as defined in section 6006) in this state.

Section 6201 imposes the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer. The taxable event is the first storage or use of the property in California. If that occurs after the bank becomes subject to use tax, then the use tax applies.

In some instances, such as when the property is in transit to the bank, it may be difficult or impossible to determine when that first use in California occurs and whether the use is before or after the bank becomes subject to the use tax. For this reason we shall consider that the use tax does not apply if, prior to the time the bank becomes subject to use tax, the property is shipped from an out-of-state supplier directly to and consigned to the bank in interstate commerce with title to the property passing to the bank upon delivery by the supplier to the carrier at the out-of-state point. Also the use tax does not apply if the property is received by and stored, used, or otherwise consumed by the bank prior to the time the bank becomes subject to the use tax. 12/5/79.

[135.0140](#) **Independent Insurance Agents and Adjusters—Use Tax.** Article XIII, section 144/5 of the California Constitution imposes a tax upon each insurer doing business in this state which is in lieu of all other taxes, with certain exceptions. This article does not exempt independent insurance adjusters or independent agents, who purchase tangible personal property for use in their business, from the use tax. 6/21/67.

[135.0160](#) **Insurance Company's Sales.** Where an out-of-state insurance company makes sales to persons other than its agents, for instance, brokers, or to its agents of tangible personal property not connected with the insurance business, it is required to collect the use tax and register with the Board. 11/17/66.

[135.0170](#) **Joint Venture.** A joint venture was created consisting of insurers registered to do business in California and paying the California gross premiums insurance tax. The in-lieu provision of the insurance tax would not apply to this joint venture unless the joint venture independently qualifies as an insurer paying the California gross premiums insurance tax. The exemption from tax covered in Regulation 1567(b) would not be applicable to this joint venture. 1/10/92.

[135.0176](#) **Leases by Insurance Company to Independent Agents.** Use tax applies to rental receipts received by an insurance company on rental of computer equipment to its independent agents. Although the agents sell the company's insurance only, they are not the insurance company's employees but rather independent operators who are paid on a commission basis and who operate out of their own offices. Under such circumstances, the imposition of use tax upon these agents based on rental receipts has an impact on the insurance company which is at most minimal and indirect. A tax imposed on insurance agents is constitutionally and statutorily prohibited only where it directly affects the insurance company. 7/15/83.

[135.0180](#) **Leases of Personal Property.** Banks and insurance companies that acquire tangible personal property ex tax and lease the property are required to collect the use tax measured by the rental receipts from such leases. 8/11/65.

[135.0221](#) **Leases of Personal Property.** Banks are authorized to purchase tangible personal property under resale certificates which they will lease to customers under a lease providing that the property remains tangible personal property even though it may be affixed to real property.

(Note: Effective December 16, 1971, the term "tangible personal property" as defined by Revenue and Taxation Code section 6016.3 includes only leased "fixtures" as to which the lessor has the specified right of removal. Property which constitutes "materials" under Regulation 1521, such as wall-to-wall carpeting, is not classified as tangible personal property even where the lessor has the right of removal upon breach or termination of the lease. Accordingly, banks may not issue resale certificates for materials. Persons who furnish and install materials are consumers of the materials, and tax applies to the sale of the property to them.) 1/23/76.

[135.0225](#) **Lease Payments by Insurance Companies.** Insurance companies that pay lessors for medical equipment leased by a covered patient are not lessees of the property. The lease contract is with the patient and the applicable tax is a use tax imposed on the patient/lessee. If an insurance company is a lessee, the applicable tax is the sales tax since the use tax can not be imposed on an insurance company. 12/18/92.

[135.0271](#) **Nonprofit Hospital Service Corporation.** Even though a hospital is licensed by the Department of Insurance as a nonprofit hospital service corporation pursuant to Division 2, Part 1, Chapter 11A of the Insurance Code (Insurance § 11491 et seq.), it is not an insurer within the meaning of California Constitution Article XIII, section 28, and it is not required to pay gross premium tax on insurers. Under Chapter 11A, nonprofit hospital service corporations are declared

to be charitable and benevolent institutions rather than insurers. Accordingly, such hospital is not exempt from use tax as an insurer. 9/11/87.

135.0272 Nonprofit Hospital Service Corporations. A nonprofit health service provider believes that it is a nonprofit hospital service corporation. It is regulated by the Department of Insurance, collects premiums, pays claims and is allowed by the Internal Revenue Service to deduct “claims reserves” on its federal income tax returns. As such, it believes that it is exempt from use tax under Insurance Code section 11493.5. The provider does not believe that it is an insurance company. The provider is not an insurer which files tax returns with the Insurance Commissioner or pays a gross premium tax.

The courts have held that section 11493.5 only exempts hospital service corporations from a property tax on their funds. (*Hospital Service of California v. City of Oakland* (1972) 25 Cal.App.3d 402.) It does not exempt these corporations from excise taxes such as the use tax. By purchasing tangible personal property for use in this state and using it here, the health service provider has subjected itself to the use tax. 8/29/90.

135.0275 Nonprofit Hospital Service Plan. A nonprofit hospital service plan is not an “insurer” as defined by Article XIII, section 28 of the California Constitution. Thus, they are subject to use tax in California. 4/18/89.

135.0300 Occasional Sales. The purchase of data processing equipment from an insurance company not required to hold a seller’s permit is not exempt as an occasional sale under sections 6367 and 6006(a) of the Revenue and Taxation Code since the equipment was held and used by the insurance company in the course of an activity for which the company would have been, but for the provisions of California Constitution, Article XIII, section 14 4/5(f), required to hold such a permit. To interpret section 6006(a) in any other manner would be to defeat the statutory scheme of taxation sanctioned by the California courts in *Beneficial Standard Life Insurance Co. v. State Board of Equalization*, 199 Cal.App.2d 18. 6/3/69.

135.0310 Occasional Sales—Insurance Company. The sale of a pre-written computer program, originally developed by an insurance holding company for its own use, does not qualify for the sales tax exemption as a sale by an insurance company since a holding company does not pay the “in lieu” gross premiums tax. The sale may, however, be exempt as an “occasional sale” if the seller has not made three or more sales of substantial amounts or a substantial number of sales in small amounts in a twelve month period. In determining if this test is met, all sales of tangible personal property must be considered, including sales to related or subsidiary companies. If this sale does not meet the “number of sales” test, it is still possible that tax might apply if the holding company is actively seeking to

promote additional sales of the program. This promotion would make the holding company a “seller” pursuant to section 6014 of the Revenue and Taxation Code and preclude the Occasional Sale exemption. 9/22/93.

135.0322 Person—State-Chartered Credit Unions. Sales by other states and their political subdivisions are not subject to sales or use tax because such entities are not included in the section 6005 definition of “person.” However, credit unions chartered by other states are not instrumentalities of those states. They are persons that could be sellers and therefore retailers if they make retail sales of tangible personal property to consumers in this state. Credit unions chartered by this state are also persons whose retail sales are subject to tax. 12/14/94.

135.0350 Sales to Insurance Companies. The California Supreme Court has overruled a previous court decision and held that the “in lieu” provision of section 28(f) of Article XIII of the California Constitution (which provides that the gross premiums tax on insurance companies is in lieu of all other taxes) applies to all activities of an insurance company, (*Mutual Life Ins. Co. of New York v. City of Los Angeles* (1990) 50 Cal.3d 402.).

However, this decision does not apply to sales which are made to an insurance company by a retailer located within California. The sales tax is a tax on the retailer, not on the purchaser, even if the retailer collects sales tax reimbursement from the purchaser. Therefore, an insurance company is not paying a tax when it pays sales tax reimbursement to the retailer, and the “in lieu” provisions considered in the above court case do not apply. 6/12/90.

135.0355 Sales to Insurance Company An out-of-state taxpayer with sales offices and warehousing in California sells labels to an insurance company located in California. The insurance company contacts the taxpayer’s sales office in this state to order labels. The taxpayer’s employee takes the order and arranges for the manufacture and delivery of these labels. The labels are manufactured out of state and then shipped by common carrier directly to the insurance company in California. The contract of sale is silent as to the passage of title.

Under these circumstances, since the contract of sale is silent as to passage of title, title passes from the seller, and thus the sale occurs no later than the time at which the seller completes its performance with respect to the physical delivery of the property. This generally occurs upon the seller’s delivery of the property to a common carrier for shipment to the customer. Accordingly, because the sale takes place outside of California, the applicable tax would be use tax imposed on the insurance company rather than sales tax imposed on the retailer. If the insurance company is paying the California Insurance Gross Premiums Tax, its use of the labels is exempt from California use tax under section 28 of Article XIII of the California Constitution. 3/27/97.

135.0370 Shipment from Point Inside California. An insurance company includes a stamp on purchase orders specifying that title to merchandise purchased passes upon delivery by the seller to a common carrier outside California. For goods shipped from points outside California, sales tax does not apply to the sale. Since insurance companies are exempt from use tax, no tax applies to transactions of this type. However, if the goods are shipped from the vendor's location inside California, the stamp is ineffective. A seller could not accept an exemption claim of this type in good faith. Therefore, the applicable tax is the sales tax, which is the liability of the seller. The seller may bill the insurance company for sales tax reimbursement if the contract so provides. 8/23/88.

135.0600 Treaty Immunizing Bank from Tax. The terms of a treaty immunized the operations of the NAD Bank (established by the governments of the United States and Mexico to finance environmental infrastructure projects in the U.S.-Mexico border region) from tax and also immunized it from tax collection duties. In addition, the terms of the treaty were specifically made part of the law of the land by Congress. Section 6352 exempts from sales and use taxes the gross receipts from the sale of and the storage, use, or other consumption in this state **of** tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this state is prohibited from taxing under the Constitution or laws of the United States or under the California Constitution. When the United States enters into a treaty with another country, its provisions become part of the laws of the United States. Thus, if such a treaty prohibits the states from imposing certain taxes, this state is prohibited from imposing such taxes. The treaty must, however, grant immunity from the particular tax at issue. For example, a treaty giving immunity from taxes on property does not provide immunity from excise taxes.

Here, the treaty provided the bank immunity from all taxation and tax collection duties. Thus, under section 6352, sales of tangible personal property by or to the bank are not subject to tax. Consequently, when purchasing from California retailers, the bank may issue exemption certificates conforming to the requirements of Regulation 1667. Although the bank is not subject to the duty to collect use tax on any of its sales of tangible personal property to California residents which are not subject to sales tax, the use tax still applies to such sales, and the purchasers must self-report their liability. 12/21/95.

BARBERS

See Miscellaneous Service Enterprises.